

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DAVID GARCIA,

Plaintiff,

vs.

CIV 12-0265 LFG/KBM

BERNALILLO COUNTY SERGEANT
ESCALANTE; BERNALILLO COUNTY
SHERIFF'S OFFICER,
R. GARCIA,

Defendant.

**ORDER GRANTING MOTION TO STAY PROCEEDINGS AND
GRANTING MOTION FOR A PROTECTIVE ORDER**

THIS MATTER came before the Court on the Motion to Stay Proceedings Pending Outcome of County Defendants' Motion for Summary Judgment filed by Defendants Escalante and Garcia (*Doc. 22*) and Defendant Garcia's Motion for a Protective Order (*Doc. 40*). Plaintiff has filed responses in opposition to both motions (*Docs. 42 and 43, respectively*), and I find that neither reply briefing nor hearing is required for my decision.

Defendants request a stay of discovery until presiding Magistrate Judge Garcia has had an opportunity to address the pending motion for summary judgment on the basis of qualified immunity. *See Doc. 38*. Defendant Garcia also asks for a protective order relieving him of the burden of attending his deposition now scheduled for today at 3:00 this afternoon. In response, Plaintiff maintains, in essence, that because Defendants waited ten months into litigation to raise the qualified immunity defense, such relief should be unavailable. I disagree.

As Defendants note, "Qualified immunity is not only a defense to liability but also

entitlement to immunity from suit and other demands of litigation. *Siebert v. Gilley*, 500 U.S. 226 (1991).” *Doc. 39* at 2. Although it may be preferable for the defense to be raised earlier in the discovery process, the protection it provides – including freedom from the burdens of the discovery process such as depositions – remain throughout the litigation process. As District Judge Browning has held, a defendant can be entitled to a stay even when he raises the qualified immunity defense well into the discovery and litigation process. *See e.g., Herrera et al. v. Santa Fe Public Schools*, CIV 11-0422 JB/KBM, *Doc. 132* at 13 (D.N.M. December 19, 2012) (where Defendant waited eighteen months after complaint was filed and most of discovery was completed, District Judge Browning held, “That Romero did not immediately raise the question whether she is immune from this lawsuit does not mean that she has some lost the right to be protected from the burdens of litigation, including discovery, that still remain.”); *Todd v. Montoya*, 2011 WL 5238900 (D.N.M.) (Browning, J.) (assertion of qualified immunity fourteen months after case was filed); *Zamora v. City of Belen*, 229 F.R.D. 225 (D.N.M. 2005) (Browning J.) (assertion almost seventeen months after case filing and nine months after discovery was complete).

Wherefore,

IT IS HEREBY ORDERED that the Motion to Stay Proceedings Pending Outcome of County Defendants’ Motion for Summary Judgment filed by Defendants Escalante and Garcia (*Doc. 22*) and Defendant Garcia’s Motion for a Protective Order (*Doc. 40*) are **granted**.


 UNITED STATES CHIEF MAGISTRATE JUDGE